

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ANDREW OGADA,	:	Civil Action No. 1:10-CV-1079
Plaintiff	:	
	:	
	:	(Chief Judge Kane)
	:	(Magistrate Judge Smyser)
v.	:	
	:	
C. LOWE, in his capacity as	:	
Warden, Pike County Correctional	:	
Facility, Lords Valley, PA, et al.	:	
Defendants	:	

ORDER

Before the Court in the captioned action is a November 16, 2010 report of the magistrate judge. No timely objections have been filed.

Accordingly, on this 9th day of December 2010, upon review of the record and the applicable law, **IT IS HEREBY ORDERED THAT:**

1. The Court **ADOPTS** the Report and Recommendation of Magistrate Judge Smyser.
2. The Petition is dismissed pending the resolution of the criminal charge. The dismissal will not work to prevent a subsequent petition if Petitioner's claims remain justiciable.¹
3. The Clerk of Court shall close this case.

S/ Yvette Kane
Yvette Kane, Chief Judge
United States District Court

¹ Petitioner is seeking relief under Zadvydas v. Davis, 533 U.S. 678 (2001). However, Zadvydas relief is not available when an alien fails to make a good faith effort to obtain a travel document. Kovalev v. Ashcroft, 71 F. App'x 919, 924 (3d Cir. 2003); Pelich v. INS, 329 F.3d 1057, 1060 (9th Cir. 2003) ("[T]he detainee cannot convincingly argue that there is no significant likelihood of removal in the reasonably foreseeable future if the detainee controls the clock."). The facts upon which Petitioner relies to assert his claims in this action are the same facts that the Government will intend to prove should the criminal charges against Petitioner proceed to trial. Judicial resources and the interest of Petitioner's rights as a criminal defendant suggest that the criminal charge be resolved first.

Middle District of Pennsylvania